IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 393 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KADAR GAGJIBHAI MIYANA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 393 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/05/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 22/10/02. By

the aforesaid order, the petitioner is detained as a bootlegger under PASA. In the detention order there is a reference about four criminal cases which are filed against the petitioner under the Bombay Prohibition Act. The detaining authority after having satisfied about the activities of the petitioner has detained him as a bootlegger under preventive detention.

On behalf of the petitioner, it is submitted that the detention order is passed in a mechanical manner. It is submitted that the statements of witnesses were recorded on 19/10/02 and the same were verified on 21/10/02 and on the very next day, i.e. on 22/10/02, the detention order was passed. In this connection, reference is made about the decision of this Court reported in 2000(3) GLR, 2696, in which under para 9, the Court has observed as under;

"The statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17/08/99, 21/08/00 and 25/08/99 with regard to the incidents dated 10/07/99, 13/06/99 and 26/06/99 were the material along with the proposal which is said to have been made on 27/08/99 and it is clear from the record that it was on 29/08/99 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27/08/99 at any time prior to 29/08/99 and on 29/08/99, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e. on 30/08/99 the detention order has been passed.

The manner in which the verification has been recorded of the statements made by these three witnesses for the purpose of Section 9(2) shows that the same has been done only as an empty formality inasmuch as the same witnesses had been called before the detaining authority and the detaining authority had recorded that whatever the statements made by the witnesses were correct. Thus, the whole exercise appears to have been done as a mechanical exercise and it is not borne out that there is an active application of mind on this aspect of the matter by the detaining authority for the purpose of verification of the facts as had been disclosed by the witnesses as as to express the fear and to invoke the privilege under Sec.9(2) against the disclosure of the names and addresses of the witnesses and it thus appears on the basis of the ratio of the decision of the Division

Bench that it is a case of wrong exercise of power under Sec.9(2) and it is established that in such cases, the wrong exercise of power under Sec. 9(2) adversely affects the detenu's right of making an effective representation guaranteed under Art.22(5) of the Constitution of India.

Once the materials are placed before the detaining authority with the proposal by the sponsoring authority, it must have reasonably sufficient time for the purpose of verification of the facts and the consideration of the entire material with an active application of mind and the order has to be passed at the earliest opportunity, but in this process to strike the balance between the public interest and the right of the detenu either of the two should not be defeated in any manner and the whole process must indicate that the detaining authority had applied its mind with the requisite approach and it had also devoted sufficient time before arriving at the decision to claim the privilege under Sec. 9(2) of the Act and also to come to the conclusion that the detenu was required to be detained immediately. In the facts of the present case, I find that this requirement of maintaining the balance has been defeated and the detention order has been passed on 30/08/99, i.e., on the next day to the date on which the materials were considered by the detaining authority".

In view of the decision taken by this Court, the order of detention is required to be quashed and set aside on the ground that the same is passed in a mechanical manner and the same is passed on the very next day, after verifying the statements of witnesses. On the aforesaid circumstances, the order of detention is ordered to be quashed and set aside and it is accordingly set aside. The petitioner-Kadar Gagjibhai Miyana is ordered to be released forthwith, if he is not required in connection with any other case. Rule is accordingly made absolute.

(P. B. Majmudar, J.)

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